There is little more to be said regarding the grounds for the Judicial Service Commission's decision not to commence removal proceedings against our Judge President. Perhaps it is worth recording for posterity the opposing views of the JSC and retired Constitutional Court Judge Johann Kriegler:

'No written record in the Ministry was found which confirmed or refuted the Judge President's allegation of oral consent. In its written response to an enquiry, the Ministry stated that it could not say that oral permission had not been given. There was therefore no evidence of the absence of consent. From this statement it will be clear that the decision not to hold a formal enquiry does not constitute an exoneration' (JSC's Supplementary Media Statement).

'The point is that whatever a minister may say, no judge dare receive any surreptitious payment of money from a financial institution carrying on business within that judge's area of jurisdiction. It is inherently improper and no consent from anybody can make it otherwise' (The Times of 7 October 2007).

Little or nothing has been said regarding the possible outcome of impeachment proceedings in the National Assembly. Ultimately the decision to remove or not to remove a judge rests in the hands of politicians. The President of our country cannot remove a judge without a resolution, premised on a verdict by the JSE finding a judge to be 'grossly incompetent' or 'guilty of gross misconduct', supported by at least two thirds of the members of the National Assembly and calling for the judge to be removed. The past political machinations of the National Assembly should leave little doubt as to the outcome of such a vote.

Are we really allowed to talk about this now? Do we have to pass our own resolutions or sign petitions to make ourselves heard? Is talking about it not perhaps going to divide the Bar? Are we not going to undermine our judges and shatter our 'frail' democracy? Will the public think? Why talk about it at all? Clearly we should defer to the JSC as the 'lawfully constituted authority' (what a shockingly pre-1994 statement), in fact, it will be arrogant not to. Will we be victimised, whether we are white, coloured, black or Asian, if we say something?

Advocates very often sit in ivory tower solitude and scream at the ceiling in frustration - it is simply in the nature of what we do. It may come as a surprise to some that once you and a colleague have screamed at each other regarding this topic, reason prevails: 'The Judge President's conduct was improper!'

However, this is not the end of the conversation. 'But should he go? - Yes! - No! - Why not? - Because ... - Why the loyalty vote?'

'Well, it was not that serious. - Not that serious! It is absolutely basic! First, you are being asked by clients whether the judge is any good. Next, you will be asked how much it will take to buy the judge. Do you want that to happen?

Yes, but they are attacking him - they're a bunch of vindictive meritocrats who do not understand where we come from and never gave him the respect that he deserves. - Some believe they did everything they could to help him. - Did they give him respect? - Does it matter? Look what he did!

He set a negative tone in this division. - By going through the motions at admissions instead of firing new entrants to the profession up with the usual 'this is an honourable profession' speech? - Don't joke - it is important for them to hear that. For some it is something to look back on for inspiration when faced with the pressures of practice. - What else? - By boycotting the
JUDICIARY

Bar dinner and apparently encouraging the
other black judges to do the same in soli
darity. - Come on, you don't go either. - True,
but the guest speaker does not all of a sudden
cancel 'due to the public controversy that has
followed on the JSC statement, dated 11
October 2007' when I am not going. - I am
concerned for all of us that we are confused
regarding the position of individual judges in
an atmosphere sometimes so thick you can
cut it with a knife. You can quite innocently
read too much into a remark or a gesture.
Instead of focusing on your matter, you are
distracted by your efforts to process events
and coming to a decision on how to react.
- Can't you be neutral? - Yes, I can, but I am
not convinced that the judge can. - All these
little things do not make for a free and open
relationship between Bar and Bench. The
most important aspect is his stonewalling. His
publicly reported response is what we see and
hear in the media - a curt 'No comment' and
we simply know no better because we are
being stonewalled as well.'

The debate changes from the specific to
the general:

'You must understand that you cannot
rectify the injustice of more than 300 years
overnight. - You are not 300 years old, you're
in your forties - don't give me that nonsense.
- Ah, you can never get away from that one
- it is a killer argument! - And you always come
back to the same old thing - when is enough
'enough'?

When I arrived in Cape Town from
Johannesburg in 1987, there were no black
people in the CBD - no black professionals, not
even black people on the pavements playing
'doppies'. - Your point being? - Well, in 1987
in Johannesburg, I was exposed to second
generation black professionals. However, the
lawyers were mostly first generation and they
were all male. They needed encouragement to
persevere in challenging glass ceilings. - And
what happened to them? - Some got tired of
it after ten years, took their skills and joined
industries where they felt more at home. - So
they are no longer in law? - No. - And what
happened in the 90s? - Black graduates were
then being mentored by black and white law-
ners and still staring at glass ceilings. - And
what happened to them? - Some also got
tired of it, took their skills and started their
own law firms where they felt more at home.
- Your point being? - Bye-bye transformation
targets for the law firms doing the mentor-
ing. - No, your point being in relation to Cape
Town? - Oh, imagine arriving in Cape Town
as a brand new black judge with no practi-
ence experience and having to deal with white
lawyers with no experience of dealing with
black professionals, let alone black lawyers. -
I imagine it was tough all round.

So when are you going to start transform-
ing Advocates for Transformation? - What
do you mean? - Your notices in the lifts get
doodled by advocates who disapprove of a race
dased grouping within the Bar. - But it is
not based on race, it is open to all who are
in favour of the principle of transformation.
- You mean, if the whole of AFT numbers

You mean, if the whole of AFT numbers 15 advocates, and 16
white advocates walk into a
meeting tomorrow asking to become members, will they be
welcomed with open arms? -
In principle, yes. - But not in
practice? - Probably not, their
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So what about racism? It has never been
dealt with properly. It gets swept under the
carpet every time. We'll never have peace
and quiet until it is brought out into the
open.- What are you talking about? - Were
you at that Saturday morning meeting at the
Place of the Book in September 2005 with
the Constitutional Court judge attending,
the presentation of the effect of discrimina-
tion on kids, the young woman from the
UCT Law Race & Gender Research Unit tell-
ing of her experiences and the session with
the groups around the tables? - Yes, the
one when no one shouted at anyone else because
the groups were too big and public? - That's
the one. Do you think it worked? - No, obvi-
ously not - it takes time to build a relationship
where you can talk without having to estab-
lish your 'credentials' every two sentences and
few were prepared to run the risk of exposure
and being labelled. Nothing more came of it
anyway.

It was a good opportunity to get some
diversity training going. - It is strange how
advocates believe that tried and tested cor-
porate human resources training tools such
as leadership diversity assessments somehow
cannot find application in the legal fraternity.
Perhaps they simply don't know that these
things exist and are used globally to ensure
proper management of members with
diverse cultural backgrounds within a group.
- Do you think we have a relationship that
is strong enough so that we can talk about
these things? - You mean you and me?
- Yes. - We are talking, aren't we? - But
what about the others? - Diversity training
should be made compulsory and facilitated in
smaller groups by independent facilitators.

Somehow, I think there is hope. My chil-
dren cannot comprehend what we 'grumpy
old men' are so "bittebek" about when we
discuss racism. They have a completely dif-
ferent perspective and resent the idea that they
have to inherit their parents' problems as if
every nuance of past racism is still applicable
to their generation. - I am getting the same
thing at home. The "dinosaur" comments
come flying in the moment I open my mouth.
Do you think they have a point? - Maybe.
I wish I could be a fly on the wall and listen
to the conversations of the twenty - to sixty
somethings at this Bar. I am convinced that
the younger members probably feel the same
way about the older members as my children
feel about me sometimes. "Stop making your
reality my reality, Dad."

And back to the specific again:

'You know, I don't mind being reminded
that we should not isolate ourselves and
forget issues of transformation in our profes-
sion. In that sense our Judge President is
indeed the thorn in our side. - Yes, but as
every gardener knows, you are either very
lucky and pluck the thorn out when it goes
in, or it becomes firmly embedded, working
its way deeper - sometimes towards vital
organs, where it festers and poisons the
system. - It can also fester and pop out on its
own. It probably depends on the thorn.'

Stop press
Sir Sydney Kentridge QC
President Thabo Mbeki will confer the
Order of the Baobab at an investiture